



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: MAY 02, 2023

IN THE MATTER OF:

Appeal Board No. 628062

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determinations holding the claimant ineligible to receive benefits, effective September 26, 2022 through October 2, 2022, on the basis that the claimant did not comply with work search requirements; charging the claimant with an overpayment of \$439 in benefits recoverable pursuant to Labor Law § 597 (4); and reducing the claimant's right

to receive future benefits by eight effective days and charging a civil penalty of \$100 on the basis that the claimant made a willful misrepresentation to obtain benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed February 3, 2023 (), the Administrative Law Judge overruled the initial determination.

The Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Our review of the record reveals that the case should be remanded to hold a hearing. At the hearing, the claimant indicated that she had her work search record in front of her, but the Judge did not ask the claimant to provide her work search record. The Board has therefore determined to provide the parties another

opportunity to submit additional testimony and other evidence in this matter. In this regard, the claimant is directed to produce her work search records for the week of September 26, 2022 through October 2, 2022. In addition, the Commissioner of Labor is directed to produce a witness to testify regarding the uploading of documentation into its system and any problems with uploading documents to the Department of Labor system during the period at issue.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues of compliance with work search requirements, recoverable overpayment, willful misrepresentation and civil penalty, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

JUNE F. O'NEILL, MEMBER